

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85477423
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The Examining Attorney has continued the refusal of registration based on mere descriptiveness of the mark pursuant to Section 2(e). Applicant respectfully requests reconsideration of the final refusal.</p> <p>The Examining Attorney bases the refusal on the fact that ULTIMATE is merely descriptive because it is laudatory. Applicant adopts the arguments and exhibits submitted in its earlier Response to Office Action. Applicant has provided ample evidence that the term has many meanings, rendering its meaning not immediately apparent to consumers of retail store services for eyewear and accessories. ULTIMATE might refer to (a) the quality of the glasses, sunglasses, contact lenses, or accessories, or (b) the availability of the glasses, sunglasses, contact lenses, or accessories, or (c) the selection of glasses, sunglasses, contact lenses, or accessories, or (d) to the quality of the retail services provided in connection with these goods. Accordingly, the term is not merely descriptive.</p> <p>The Examining Attorney also points to registrations that include disclaimers of the term ULTIMATE. However, the USPTO routinely registers marks for eyewear on the Principal Register that include the term ULTIMATE. <i>See</i> ULTIMATE SPECTACLE, U.S. Reg. No. 3448439 (retail store services featuring eyeglasses and optical wear, with not even the suggestion that ULTIMATE must be disclaimed); ULTIMATE VISIONS, U.S. Reg. No. 2982517 (outdoor eyewear, namely sunglasses, with no requirement that ULTIMATE must be disclaimed). Copies of these TESS records were submitted earlier. Similarly, there are registrations of marks for eyewear that contain arguably descriptive terms that are not disclaimed. <i>See, e.g.,</i> KROME EYEWEAR, U.S. Reg. No. 3985417; EMINENT EYEWEAR, U.S. Reg. No. 3639819. Copies of these TESS records are submitted herewith. There is no legal or factual basis to treat the application to register ULTIMATE EYEWEAR any differently.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_209120230194-103446242_ulteyeatt.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\854\774\85477423\xml1\RFR0002.JPG
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DESCRIPTION OF EVIDENCE FILE	TESS records
SIGNATURE SECTION	
RESPONSE SIGNATURE	/sherry flax/
SIGNATORY'S NAME	Sherry Flax
SIGNATORY'S POSITION	Attorney of record, Maryland bar member
SIGNATORY'S PHONE NUMBER	4103328784
DATE SIGNED	08/23/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Aug 23 10:55:39 EDT 2012
TEAS STAMP	USPTO/RFR-209.120.230.194 -20120823105539777943-854 77423-4908efcfb35e836d643 bc95a795c799dd12-N/A-N/A- 20120823103446242752

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85477423** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Examining Attorney has continued the refusal of registration based on mere descriptiveness of the mark pursuant to Section 2(e). Applicant respectfully requests reconsideration of the final refusal.

The Examining Attorney bases the refusal on the fact that ULTIMATE is merely descriptive because it is laudatory. Applicant adopts the arguments and exhibits submitted in its earlier Response to Office Action. Applicant has provided ample evidence that the term has many meanings, rendering its meaning not immediately apparent to consumers of retail store services for eyewear and accessories. ULTIMATE might refer to (a) the quality of the glasses, sunglasses, contact lenses, or accessories, or (b) the availability of the glasses, sunglasses, contact lenses, or accessories, or (c) the selection of glasses, sunglasses, contact lenses, or accessories, or (d) to the quality of the retail services provided in connection with these goods. Accordingly, the term is not merely descriptive.

The Examining Attorney also points to registrations that include disclaimers of the term ULTIMATE. However, the USPTO routinely registers marks for eyewear on the Principal Register that include the term ULTIMATE. *See* ULTIMATE SPECTACLE, U.S. Reg. No. 3448439 (retail store services featuring eyeglasses and optical wear, with not even the suggestion that ULTIMATE must be disclaimed); ULTIMATE VISIONS, U.S. Reg. No. 2982517 (outdoor eyewear, namely sunglasses, with no requirement that ULTIMATE must be disclaimed). Copies of these TESS records were submitted earlier. Similarly, there are registrations of marks for eyewear that contain arguably descriptive terms that are not disclaimed. *See, e.g.,* KROME EYEWEAR, U.S. Reg. No. 3985417; EMINENT EYEWEAR, U.S. Reg. No. 3639819. Copies of these TESS records are submitted herewith. There is no legal or factual basis to treat the application to register ULTIMATE EYEWEAR any differently.

EVIDENCE

Evidence in the nature of TESS records has been attached.

Original PDF file:

[evi_209120230194-103446242_..ulteyeatt.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /sherry flax/ Date: 08/23/2012

Signatory's Name: Sherry Flax

Signatory's Position: Attorney of record, Maryland bar member

Signatory's Phone Number: 4103328784

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing

him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85477423

Internet Transmission Date: Thu Aug 23 10:55:39 EDT 2012

TEAS Stamp: USPTO/RFR-209.120.230.194-20120823105539

777943-85477423-4908efcfb35e836d643bc95a

795c799dd12-N/A-N/A-20120823103446242752



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KROME EYEWEAR

Word Mark	KROME EYEWEAR
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Eyeglasses, sunglasses, magnifying glasses, eyeglass frames, eyeglass lenses; eyewear accessories, namely, cases and chains. FIRST USE: 20101115. FIRST USE IN COMMERCE: 20101115
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85180149
Filing Date	November 18, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 12, 2011
Registration Number	3985417
Registration Date	June 28, 2011
Owner	(REGISTRANT) Sun Ban Fashions CORPORATION NEW YORK 600 Fourth Avenue Brooklyn NEW YORK 11215
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EYEWEAR" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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Eminent

eyewear

Word Mark

EMINENT EYEWEAR

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Sunglasses, eyeglasses; Aesthetic glasses, namely, fashion eyewear; Protective glasses; Goggles for diving and other watersports, for skiing snowboarding, and safety goggles; Lenses for eyeglasses and sunglasses; Lenses for dust masks, protective face masks not for medical use, SCUBA masks, swimming masks, and welding masks; Supports for glasses, namely, frames, nose pieces, earstems, chains, and straps; Cases for eyeglasses and sunglasses; Cases for dust masks, protective face masks not for medical use, SCUBA masks, swimming masks, and welding masks; Parts and accessories for sunglasses and eyeglasses, namely, frames, earstems, nose pieces, chains, and straps; Prescription eyewear including parts and accessories therefore, namely, lenses, frames, earstems, nose pieces, chains, and straps

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 79056736

Filing Date June 23, 2008

Current Basis 66A

Original Filing Basis 66A

Published for Opposition March 31, 2009

Registration Number 3639819

International Registration 0971907

Number**Registration Date** June 16, 2009**Owner** (REGISTRANT) Anthony Glass INDIVIDUAL AUSTRALIA 48 Earlwood Crescent BARDWELL PARK NSW 2207 AUSTRALIA**Priority Date** February 5, 2008**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "EYEWEAR" APART FROM THE MARK AS SHOWN**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the word "EMINENT" in block-type style lettering, the initial "E" is in upper case and the other letters are in lower case, above the word "EYEWEAR" in smaller block-type style lettering, all in lower case lettering.**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE

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